

ACTION FORM

PROCEEDING Council Meeting	
DEPARTMENT OF ORIGIN: Town Hall	DATE SUBMITTED: 09/25/2020
PREPARED BY: Terry Tieman	
SUBJECT: Our Harvest Update	
REFERENCE: Attachments: Building Committee Review of Our Harvest Outdoor Seating Area on August 14, 2020 Facts Regarding Our Harvest Outside Seating Area Redacted (for proprietary reasons) Building Committee Package dated August 14, 2020 Building Committee, August 14, 2020 Draft Minutes CSi Building Permit Approval Process Analysis	
RELATED PROJECT:	
REVIEWED BY: Teresa Tieman	
EXHIBITS:	
EXPENDITURE REQUIRED: 0 AMOUNT BUDGETED: 0	
FUNDING SOURCE (Dept./Page in CIP & Budget):	
TIMETABLE:	
RECOMMENDED ACTION: Review and discussion of the project information.	

BACKGROUND AND ANALYSIS

On August 14, 2020, the Building Committee met at 8:15. The meeting and agenda were properly noticed. The property owner and the operator of Our Harvest Restaurant are seeking approval for a 540 square foot outside seating area to be located on the area directly in front of the canal end. The area is not currently used for parking.

The permit is pending while the owner is seeking approvals from the Fire Marshal, Alcoholic Beverage Commission, Health Department, and Sussex County. The owner is also seeking approval for the joining of two parcels.

Since the meeting, approximately three individuals have contacted the Building Official to seek information regarding the project. We have become aware of an email circulating with inaccurate information. This information is being presented so that correct and accurate information can be received by all property owners.

Building Committee Review of Our Harvest Outdoor Seating Area on August 14, 2020

Prepared September 1, 2020

In response to the Public Comments made at the August 28, 2020 Council meeting, we offer the following information:

Any questions related to a project regarding the project's Code compliance should be referred to the Building Official, Patricia Schuchman. The Building Official may be reached during normal business hours M – F 8 am – 4:30 pm. Please call or email the Building Official at: 302.539.3011 extension 205 or pschuchman@fenwickisland.org

We ask this because the Building Official has reviewed the project for code compliance and has detailed knowledge of the project. Interestingly, to date, only one person has contacted the Building Official for any information regarding the Outdoor Seating Area permit.

Prior to any Building Committee meeting, the Building Official conducts a pre-development meeting and works with the permittee to prepare a development package for review by the Building Committee.

Once the development package is complete, a Building Committee meeting is scheduled and properly noticed. Approximately a week prior to the meeting Building Committee members receive a copy of the development package for review. Each member reviews the materials which includes a copy of the construction plans, the agenda, and an explanation of the proposed work.

If a member of the Committee has questions regarding the proposed project, they will reach out to the Building Official for clarification.

At the time of the meeting, the Committee can ask questions or if they have no questions they may approve or not approve a project.

The Building Committee's task is to review the project before them for compliance with the Code. The Committee provides an additional check to ensure that the Building Official has properly interpreted the Code.

Facts Regarding Our Harvest Outside Seating Area

- Application reviewed by Building Committee on August 14, 2020
- Outdoor Seating Areas are addressed in the Town of Fenwick Town Code Chapter 160-5A (9)

In summary,

- **Outside service areas are permitted to be no more than 700 square feet with seated dining only in conjunction with a restaurant or eatery**
- **No part of any outside service area may be located in any setback area and may not eliminate parking spaces to achieve sufficient space for outside service area.**
- **No bar area is allowed in any outside seating area.** This is different than the rules applied to a hotel because these regulations apply only to restaurants and eateries as defined in our ordinance.
- **Stand-up consumption of alcoholic beverages is not allowed in the permanent seated dining area, including any outside service area.**
- **Music or entertainment, live or recorded, shall not be allowed in any outside service area except for occasions approved by the Town Council.**
- **Hours of operations for any restaurant or eatery outside service area shall be no earlier than 8:00 a.m. and no later than 11:00 p.m., including set-up and final clean-up.**

The entire Town Code Chapter is included below:

(9) Restaurant or eatery as herein defined, subject to the following

requirements:

(a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

BAR

A commercial establishment, not part of a restaurant, whose primary activity is the sale of alcoholic beverages to be consumed on the premises.

BAR AREA

The floor space in any restaurant that is used primarily for the service or consumption of alcoholic beverages for patrons waiting to be seated in the permanent seated dining area. It shall include, but not be limited to, any bar counter and the contiguous floor and seating area where alcoholic beverages are dispensed or consumed, together with all other portions of the patron area except the permanent seated dining area, whether contiguous to the bar or not. A counter in a "bar area" where food is served is not considered part of the permanent seated dining area.

EATERY

A commercial establishment where food is prepared and served to the public.

OUTSIDE SERVICE AREA

A porch, patio, deck or area of land or buildings which is not enclosed on all sides with permanent structural walls and roofing and which has a floor level no higher than three feet above ground level, is not more than 700 square feet in area and which is used for seated dining only in conjunction with a restaurant or eatery. No part of any outside service area may be located in any setback area and may not eliminate parking spaces to achieve sufficient space for outside service area.

PATRON AREA

The area of a restaurant open to the public as patrons and exclusive of kitchen, storage areas and restrooms.

PERMANENT SEATED DINING AREA

The floor space in any restaurant where tables and chairs and/or booths are provided for serving complete meals to seated patrons. **The floor space of any outside service area shall not be included as part of a restaurant's permanent seated dining area.**

RESTAURANT

A commercial establishment with a patron area of less than 4,000 square feet and which is regularly used and kept open for the purpose of serving complete meals, as referred to in the Delaware Code, to patrons for consideration and which has seating and tables for dining and suitable kitchen facilities connected therewith under the charge of a chef or cook. The service of only such foods as snacks, sandwiches, salads, pizza, hamburgers,

etc., at any time in the evening are not considered complete meals.

(b) Requirements.

- [1] No bar, as defined, shall be allowed in Fenwick Island.
- [2] **No bar area, as defined, shall be allowed in any outside service area.**
- [3] In-car or drive-through service may not be provided by a restaurant.
- [4] A restaurant may have a bar area as defined where stand-up consumption of alcoholic beverages for patrons waiting to be seated is allowed, provided that the number of patrons in the bar area does not exceed the Fire Marshal's occupancy limit for that area and such bar area is located on the same floor level as the permanent seated dining area.
- [5] **Stand-up consumption of alcoholic beverages is not allowed in the permanent seated dining area, including any outside service area.**
- [6] All tables and chairs in the permanent seated dining area of a restaurant shall be maintained and located in an accessible and usable configuration at all times and may not be temporarily moved so as to increase any bar area.
- [7] **Music or entertainment, live or recorded, shall not be allowed in any outside service area except for occasions approved by the Town Council.**
- [8] All windows and doors of any restaurant or bar area shall remain closed except for the passage of patrons when music is being played.
- [9] A minimum of 85% of the patron area must be dedicated as a permanent seated dining area.
- [10] A restaurant may not serve alcoholic beverages in the morning before 9:00 a.m. or in the evening later than 1:00 a.m., or later than the time when the offering of complete meals in the permanent seated dining area ends, whichever is earlier. **Hours of operations for any restaurant or eatery outside service area shall be no earlier than 8:00 a.m. and no later than 11:00 p.m., including set-up and final clean-up. In the case of a restaurant that includes outside service area, such outside service may be suspended or revoked if there have been three or more cases during a calendar year of violations of any Town ordinances. Oral and written notice of each such violation will be given to the licensed restaurant owner. Such revocation may be immediate, deferred to the entire season for the following year, or both.**

In summary,

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**BUILDING COMMITTEE MEETING
AUGUST 14, 2020**

PRESENTED TO BUILDING COMMITTEE:

Agenda – Building Committee Meeting – August 14, 2020
Building Committee Meeting Minutes – May 14, 2019
Construction Plans – Sheet CS001 – Cover Sheet
Sheet A-101 – Framing Plan (redacted - proprietary)
Sheet A-201 – Elevations
Sheet A-301 – Sections & Details (redacted - proprietary)
Sheet A-100 – Site Plan

**OUR HARVEST RESTAURANT
1106 COASTAL HIGHWAY
FENWICK ISLAND, DELAWARE**

The owner of Fenwick Square Shopping Center requested approval for an outside seating area to be located on the parking lot directly in front of the canal end. The area is not currently used for parking for the shopping center.

OUTSIDE SERVICE AREA (Fenwick Island Town Code Definition § 160-5A(9)(a))

A porch, patio, deck or area of land or buildings which is not enclosed on all sides with permanent structural walls and roofing and which has a floor level no higher than three feet above ground level, is not more than 700 square feet in area and which is used for seated dining only in conjunction with a restaurant or eatery. No part of any outside service area may be located in any setback area and may not eliminate parking spaces to achieve sufficient space for outside service area.

STRUCTURAL

The request is for a 540 square feet wooden ground level open deck with a pergola overhead. A 48' x 6' ADA compliant wooden walkway will be constructed along the front of the canal. High impact bollards will be secured into the existing parking lot in front of the deck. All construction is in compliance with International Building Code (2012 Edition), International Fire Prevention Code (NFPA 101 – 2015 Edition), Delaware Fire Regulations (2015 Edition) and Town of Fenwick Island code.

PARKING

Our Harvest Restaurant currently has 2,500 square feet of customer area. Town code requires one parking space per 100 square feet of total patron area. In addition to the 25 required parking spaces there are a total of 33 parking spaces dedicated to Our Harvest. No existing parking spaces will be utilized for the proposed outside seating area which is currently designated as no parking. Two ADA compliant handicap parking spaces will remain, however one will be re-located on the north side of the building.

SETBACKS

The setbacks from Coastal Highway for the proposed outside seating area are 45' from the front property line and 130' from each side property line.

(Attached: Sheets CS001, A201 and A100.)



The Town of Fenwick Island

800 Coastal Highway, Fenwick Island, DE 19944

302-539-3011 ~ 302-539-1305 fax

www.fenwickisland.delaware.gov

BUILDING COMMITTEE MEETING

FRIDAY AUGUST 14, 2020 AT 8:15 A.M.

Dial In: 301-715-8592

Meeting ID: 837 5691 5491

or

<https://us02web.zoom.us/j/83756915491>

1) Introduction

2) No Public Participation

3) Minutes –

Approve Minutes of the May 14, 2019 Building Committee meeting

4) Issues for Discussion and Possible Action

- a) Proposed construction of 540 s.f. outdoor seating area for Our Harvest Restaurant
1106 Coastal Highway

5) Possible items for discussion at next meeting

6) Next meeting – To Be Determined

7) Adjourn

Posted: August 7, 2020



The Town of Fenwick Island

800 Coastal Highway, Fenwick Island, DE 19944-4409
302-539-3011 ~ 302-539-1305 fax
www.fenwickisland.delaware.gov

BUILDING COMMITTEE MAY 14, 2019 AT 8:15 AM

MINUTES

In Attendance

Bill Weistling, Reid Tingle

Absent

Jesse Sheppard

Staff in Attendance

Pat Schuchman

Introduction

Bill called the meeting to order at 8:15 AM.

Minutes

A MOTION was made by Reid, seconded by Bill, to accept the minutes from the March 26, 2019 meeting. The MOTION passed unanimously.

Issues for Discussion and Possible Action

Bill reported on the first reading of Chapter 61-1F (PODS and Dumpsters). The first reading was approved by the Town Council with a minor change, where they agreed to remove "if necessary" at the end of the line item #2.

A MOTION was made by Reid, seconded by Bill, to accept the changes to the first reading of Chapter 61-1F. The MOTION passed unanimously.

Next Meeting

Since the Town Council approved the ordinances at their last meeting that residential projects no longer require the approval of the Building Committee, the next meeting will be held when a commercial permit application is received. The items for discussion on the agenda will be determined at that time.

Adjournment

A MOTION was made by Reid, seconded by Bill, to adjourn the meeting. The MOTION passed unanimously, and the meeting adjourned at 8:18 AM.

1106 COASTAL HWY, FENWICK ISLAND, DE

REPORTED FOR JOHN TRADER

OUR HARVEST RESTAURANT

for

ELEVATIONS

Sheet No. A-201

Rev. No.

Rev. Date

Rev. Description

Rev. By

Rev. Date

1106 COASTAL HWY, FENWICK ISLAND, DE

REPORTED FOR JOHN TRADER

OUR HARVEST RESTAURANT

for

ELEVATIONS

1106 COASTAL HWY, FENWICK ISLAND, DE

REPORTED FOR JOHN TRADER

OUR HARVEST RESTAURANT

for

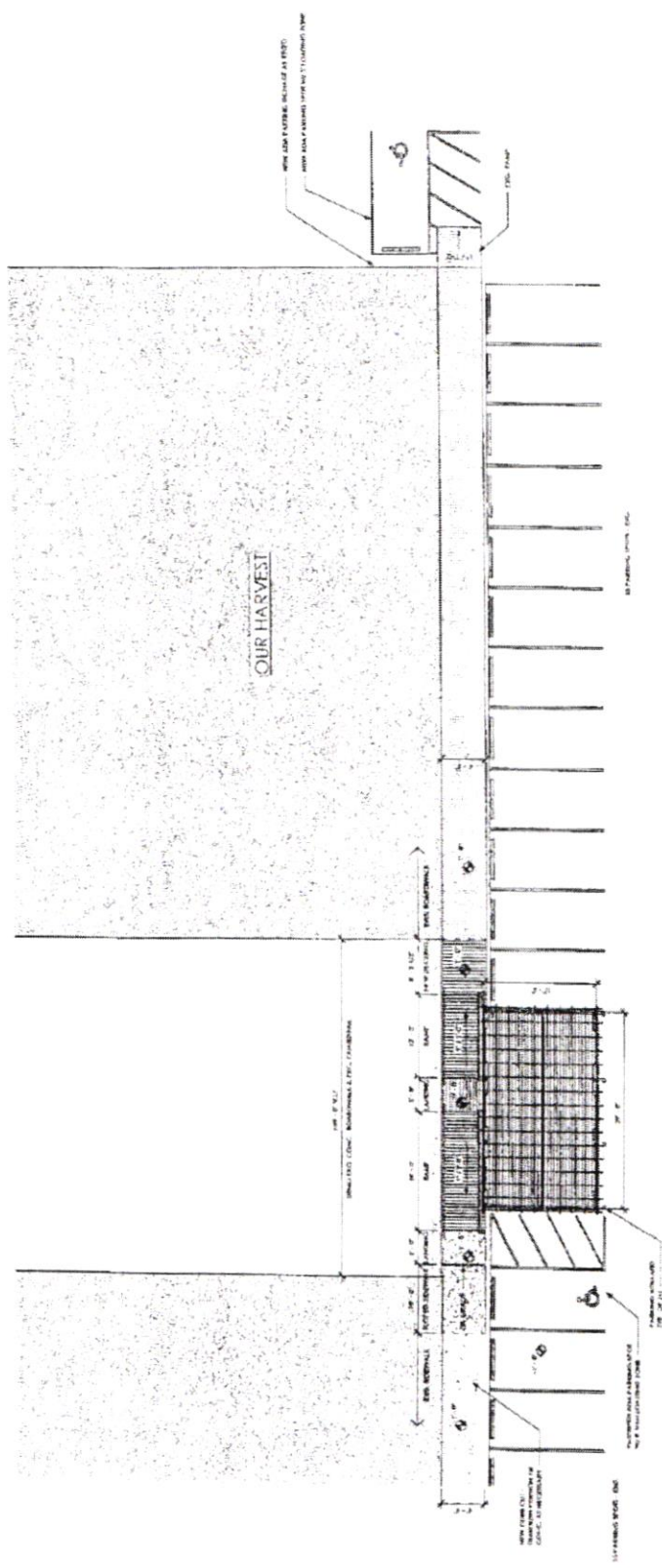
ELEVATIONS

① PORCH ELEVATION
1/4" = 1'-0"

② PORCH ELEVATION
1/4" = 1'-0"

③ PORCH ELEVATION
1/4" = 1'-0"

④ PORCH ELEVATION
1/4" = 1'-0"

① ACQUISITION OF FLUENT



The Town of Fenwick Island

800 Coastal Highway, Fenwick Island, DE 19944-4409
302-539-3011 ~ 302-539-1305 fax
www.fenwickisland.delaware.gov

BUILDING COMMITTEE
AUGUST 14, 2020 AT 8:15 AM
MEETING HELD VIA TELECONFERENCE

MINUTES

In Attendance

Bill Weistling, Jesse Sheppard, Reid Tingle

Staff in Attendance

Pat Schuchman, Terry Tieman

Introduction

Bill called the meeting to order at 8:15 AM.

Minutes

A MOTION was made by Reid, seconded by Jesse, to accept the minutes from the May 14, 2019 meeting. The MOTION passed unanimously.

Issues for Discussion and Possible Action

Bill stated the request for the proposed construction for a 540 square foot outdoor seating area at 1106 Coastal Highway. Pat noted that the request was submitted by Joe Balsamo, owner of 1106 Coastal Highway, on behalf of Our Harvest. Pat noted the proposed construction of an outdoor seating area which includes a 540 square foot deck with pergola and a 48' x 6' walkway along the canal. The proposed seating area will not be situated in the parking area and will not take up any parking spaces.

Bill questioned if approvals have been received by the Fire Marshal, Alcoholic Beverage Commission, Sussex County, and Health Department. Pat replied that the owner has received preliminary clearance from Sussex County and are still waiting on the approvals before they proceed. She added that due to COVID-19 recovery, if the Building Committee approves the plans today, then the construction of the deck could begin and Our Harvest could work along the guidelines that the State has for outside seating until stage 2 is over. Due to COVID-19 recovery, they would be able to serve on the deck now before the Alcoholic Beverage Commission approval.

Reid asked if there have been any issues with the temporary COVID-19 outdoor dining. Pat replied none whatsoever.

Bill commented that he has looked over the plans and the project meets the square footage requirements. He added that the project will have no roof over it.

Pat stated the definition for an outdoor service area as per Town Code: *a porch, patio, deck or area of land or buildings which is not enclosed on all sides with permanent structural walls and roofing and which has a floor level no higher than three feet above ground level, is not more than 700 square feet in area and which is used for seated dining only in conjunction with a restaurant or eatery. No part of any outside service area may be located in any setback area and may not eliminate parking spaces to achieve sufficient space for outside service area.* She noted that this proposed construction complies with this.

A MOTION was made by Reid, seconded by Jesse, to approve the outdoor seating area in conjunction with the restaurant per Town Code. The MOTION passed unanimously.

Next Meeting

The next meeting will be determined when a future commercial permit application is received.

Adjournment

A MOTION was made by Jesse, seconded by Reid, to adjourn the meeting. The MOTION passed unanimously and the meeting adjourned at 8:20 AM.



Code Solutions International, LLC
225 Manchester Way, Middletown, DE 19709
302/743-4715
codesolutionsint@gmail.com

Single Source Building Code Consulting
Electronic Plan Review Specialists

September 7, 2020

Our Harvest Restaurant – Outside Service Area – Fenwick Island, DE

Building permit approval process analysis

Codes Solutions International, LLC was engaged to review the process used in the issuance of a building permit for the above noted project.

Our office was provided with support documentation including the following:

- Architectural construction drawings prepared by Solutions Integrated Planning, Engineering and Management, LLC (unsealed)
- Building Committee Review

Assumptions made for this review are as follows:

- The Town of Fenwick Island, Sussex County and the Office of the State Fire Marshal were all provided with adequate construction documents to determine compliance with the applicable regulatory codes and ordinances.
- Approval from the above noted agencies was received prior to the issuance of a building permit.
- Each agency noted above, performed an adequate review, and issued an approval accordingly.

Our office reviewed The Town of Fenwick Island Code, including Chapter 160 "Zoning", and found that the process, as presented to us, **was in accordance with all applicable criteria**, including but not limited to:

- Parking
- Lighting
- Structural
- Traffic lanes
- Building construction setbacks
- Building use, area, and height
- Staff and committee review

Furthermore, Town Code Section 61-3 (c)(2) requires that all permit applications in the Commercial Zoning District be forwarded to the Building Committee for approval. That appears to have been done properly. No information could be located that directs the Building Official or the Building Committee to seek public input for routine building permit applications.

Our office further reviewed the provided construction documents regarding conformance to FEMA regulations for construction in a flood zone. While we were not provided with certified elevation information, we did find that the construction, as presented, is in general conformance with ASCE 24-05 section 4.8 for "Decks, Concrete Pads and Patios". Additionally, we found to issues regarding conformance to the other applicable sections of that construction standard.

Regards,

David A. Naples, ICC Certified Master Code Professional

Owner/member Code Solutions International, LLC